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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,202	08/31/2001	John Brooks Smith	7152	4500

7590

07/29/2004

JOHNS MANVILLE INTERNATIONAL, INC
Legal Department
P.O. Box 5108
Denver, CO 80217

EXAMINER

RHEE, JANE J

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/945,202	Applicant(s) SMITH ET AL.	
	Examiner Jane J Rhee	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 and 54-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33, 54-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Appeal

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. Prosecution is reopened and a complete action on the merit follows:

Withdrawn Rejections

2. The 35 U.S.C. 103(a) rejection of claims 1-33,64-63 over Weinstein et al. in view of Berdan and in further view of Allwein et al. has been withdrawn due to applicant's arguments in 5/10/2004.

Response to Arguments

3. Applicant's arguments filed 5/10/2004 have been fully considered but they are not persuasive.

In response to applicant's argument that both Weinstein et al. and Berdan teaches away from the claimed invention, Weinstein et al. teaches insulating both standard and non standard width cavities with their precut batts, however does not teach that a standard size uncut batt can not be used with precut batts. In fact, Weinstein et al. just teaches that it is preferred to provide precut batts for faster installation of the batts without the need to cut the batt at the job site with knives. Also Berdan teaches one type of insulation batt in a package, however does not teach away from the claimed invention because it does not exclude a precut batt to be joined with the uncut batt.

New Rejection

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-9,11-25,27-33,54-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berdan II (5350063) in view of Weinstein et al. (6165305).

Berdan teaches a plurality of resilient uncut fibrous insulation batt, the fibrous insulation batt having a length, a width and a thickness, the fibrous insulation batt having a first major surface and a second major surface, stack of uncut fibrous insulation batt wherein the stack of fibrous insulation batt is being compressed in a direction perpendicular to the major surfaces of the insulation batts and is enveloped within a covering (figure 7 and figure 8) for the purpose of to enable the shipping of highly compressed package when can be broken down into smaller units with both the shipping package and the units themselves being capable of being cartwheeled by an individual installer or insulation contractor (col. 1 lines 56-61). Berdan teaches that the resilient fibrous insulation batts are between about 0.4 pounds /ft³ and about 1.5 pounds/ft³ (col. 2 lines 67) for the purpose of enabling it to be compressed during packaging (col. 2 lines 63-64). Berdan teaches that the facing sheet is made of material selected from the group consisting of kraft paper, polymeric film, and foil scrim Kraft paper laminate (col. 3 lines 6-9) for the purpose of holding the batts in compression (col. 3 lines 5-6).

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Berdan fail to disclose the precut fibrous insulation batt having a plurality of longitudinally extending batt sections formed in precut fibrous insulation batt by a plurality of longitudinally extending cut means spaced inwardly from lateral edges of the precut fibrous insulation batt and located intermediate the batt sections of the precut fibrous insulation batt, each of the cut means being closed to prevent a formation of thermal bridges in the direction of the thickness of the precut fibrous insulation batt, the batt sections being separably joined to adjacent batt sections by separable connector means, extending along the length of the precut fibrous insulation batt, the fibrous insulation batt being between about 10 inches and 24 inches in width, and successive batt sections of the batt sections of the precut fibrous insulation batt having widths such that, by separating at least one batt section from the pre-cut fibrous insulation batt, an integral batt can be formed having any of a series of selected widths that range from the width of about 1 to 3 inches to a greater width less than the width of the precut fibrous insulation batt and that differ in width in increments that are between about 1 inch and about 4 inches in width. Berdan fail to disclose that the pre cut fibrous insulation batt is about 15 inches in width and the successive batt section of the batt sections of the precut fibrous insulation batt have widths of about 2 and a half, 4, 4, and 4 and a half inches. Berdan fail to disclose a facing sheet that overlies a major surface of the fibrous insulation batt and is bonded to the major surface of the fibrous insulation batt, and the facing sheet has a separable means therein extending for the length of the fibrous insulation batt. Berdan fail to disclose that the separable means of the facing sheet is perforated line in the

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facing sheet. Berdan fail to disclose that the perforation of the perforated line are filled with a bonding agent that bonds the facing sheet to the major surface of the resilient fibrous insulation batt to close the perforations so that the facing sheet functions as a vapor barrier. Berdan fail to disclose that the successive batt sections have widths such that an integral batt can be formed having any of a series of selected widths that differ in width predominately in about 1 to about 2 inch increments. Berdan fail to disclose that the separable connector means are formed in the precut fibrous insulation batts by partial cuts in the precut fibrous insulation batts, intermediate adjacent batt section of the precut fibrous insulation batt, that do not completely sever the batt between the adjacent batt section and the partial cuts are closed to prevent the formation of thermal bridges by the resilience of the precut fibrous insulation batt. Berdan fail to disclose that the length of each of the resilient fibrous insulation batts is at least 46 inches and that the thickness of the fibrous insulation batts is at least 3 inches. Berdan fail to disclose precut fibrous batt with a width of 15 inches and the width of batt sections of 3-6 inches.

Weinstein et al. teaches a plurality of resilient fibrous insulation batt (col. 3 lines 34-38), the fibrous insulation batt having a length, a width and a thickness (col. 4 lines 3-4), the fibrous insulation batt having a first major surface and a second major surface (col. 4 lines 11-12), the precut fibrous insulation batt having a plurality of longitudinally extending batt sections (figure 1 number 20) formed in precut fibrous insulation batt by a plurality of longitudinally extending cut means (col. 5 lines 50-51) space inwardly from lateral edges of the precut

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fibrous insulation batt and located intermediate the batt sections of the precut fibrous insulation batt (figure 1 number 20), each of the cut means being closed to prevent a formation of thermal bridges in the direction of the thickness of the precut fibrous insulation batt (col. 6 line 3), the batt sections being separably joined to adjacent batt sections by separable connector means, extending along the length of the precut fibrous insulation batt (figure 1 number 20), the fibrous insulation batt being between about 9 inches and 25 inches in width (col. 4 lines 19) and successive batt sections of the batt sections of the precut fibrous insulation batt having widths such that, by separating at least one batt section from the pre-cut fibrous insulation batt, an integral batt can be formed having any of a series of selected widths that range from the width of about 1 to 3 inches to a greater width less than the width of the precut fibrous insulation batt and that differ in width in increments that are between about 1 inch and about 4 inches in width (col. 4 lines 19-21) for the purpose of providing batts which can be used to either insulate standard width framework cavities or be width cavities without the need to cut the fibrous insulation at the job site with knives (col. 2 lines 18-24). Weinstein et al. teaches that the pre cut fibrous insulation batt is about 15 inches in width and the successive batt section of the batt sections of the precut fibrous insulation batt have widths of about 2 and a half, 4, 4, and 4 and a half inches (col. 4 lines 19-21) for the purpose of fitting the batts in non standard width cavities (col. 4 line 31-32). Weinstein et al. teaches a facing sheet that overlies a major surface of the fibrous insulation batt and is bonded to the major surface of the fibrous insulation batt, and the facing sheet has a separable

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means for the purpose of extending for the length of the fibrous insulation batt (col. 5 lines 1-7). Weinstein et al. teaches that the separable means of the facing sheet is perforated line in the facing sheet (col. 5 lines 16) for the purpose of fitting batts in non standard width of cavities (col. 4 line 31-32). Weinstein et al. teaches that the perforation of the perforated line are filled with a bonding agent that bonds the facing sheet to the major surface of the resilient fibrous insulation batt for the purpose to close the perforations so that the facing sheet functions as a vapor barrier (col. 5 lines 65-col. 6 lines 1-5). Weinstein et al. teaches that the successive batt sections have widths such that an integral batt can be formed having any of a series of selected widths that differ in width predominately in about 1 to about 2 inch increments (col. 4 lines 20-21) for the purpose of fitting batts in non standard width of cavities (col. 4 line 31-32). Weinstein et al. teaches that the separable connector means are formed in the precut fibrous insulation batts by partial cuts in the precut fibrous insulation batts, intermediate adjacent batt section of the precut fibrous insulation batt, that do not completely sever the batt between the adjacent batt section and the partial cuts are closed to prevent the formation of thermal bridges by the resilience of the precut fibrous insulation batt (col. 5 lines 50-61 and col. 6 lines 3). Weinstein et al. teaches that the length of each of the resilient fibrous insulation batts is at least 46 inches (col. 4 lines 7-8) and that the thickness of the fibrous insulation batts is at least 3 inches (col. 3 lines 65-67) for the purpose of fitting batts in nonstandard width of cavities (col. 4 line 31-32). Weinstein et al. teaches precut fibrous batt with a

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width of 15 inches and the width of batt sections of 3-6 inches (col. 4 lines 19-21) for the purpose of fitting batts in nonstandard width of cavities (col. 4 line 31-32).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Berdan with the precut fibrous insulation batt having a plurality of longitudinally extending batt sections formed in precut fibrous insulation batt by a plurality of longitudinally extending cut means space inwardly from lateral edges of the precut fibrous insulation batt and located intermediate the batt sections of the precut fibrous insulation batt, each of the cut means being closed to prevent a formation of thermal bridges in the direction of the thickness of the precut fibrous insulation batt, the batt sections being separably joined to adjacent batt sections by separable connector means, extending along the length of the precut fibrous insulation batt, the fibrous insulation batt being between about 10 inches and 24 inches in width, and successive batt sections of the batt sections of the precut fibrous insulation batt having widths such that, by separating at least one batt section from the pre-cut fibrous insulation batt, an integral batt can be formed having any of a series of selected widths that range from the width of about 1 to 3 inches to a greater width less than the width of the precut fibrous insulation batt and that differ in width in increments that are between about 1 inch and about 4 inches in width for the purpose of providing batts which can be used to either insulate standard width framework cavities or be width cavities without the need to cut the fibrous insulation at the job site with knives (col. 2 lines 18-24) as taught by Weinstein et al.

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Therefore, it would obvious to one having ordinary skill in the art at the applicant's invention was made to provide Berdan with the pre cut fibrous insulation batt is about 15 inches in width and the and the successive batt section of the batt sections of the precut fibrous insulation batt have widths of about 2 and a half, 4, 4, and 4 and a half inches, the successive batt sections that have widths such that an integral batt can be formed having any of a series of selected widths that differ in width predominately in about 1 to about 2 inch increments, the length of each of the resilient fibrous insulation batts is at least 46 inches, the thickness of the fibrous insulation batts is at least 3 inches, and the precut fibrous batt with a width of 15 inches and the width of batt sections of 3-6 inches for the purpose of fitting batts in nonstandard width of cavities (col. 4 line 31-32) as taught by Weinstein et al.

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Berdan with a facing sheet that overlies a major surface of the fibrous insulation batt and is bonded to the major surface of the fibrous insulation batt, and the facing sheet has a separable means for the purpose of extending for the length of the fibrous insulation batt (col. 5 lines 1-7) as taught by Weinstein et al.

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Berdan with that the separable means of the facing sheet is perforated line in the facing sheet for the purpose of fitting batts in non standard width of cavities (col. 4 line 31-32) as taught by Weinstein et al.

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Berdan with the perforation of the perforated line are filled with a bonding agent that bonds the facing sheet to the major surface of the resilient fibrous insulation batt for the purpose to close the perforations so that the facing sheet functions as a vapor barrier (col. 5 lines 65-col. 6 lines 1-5) as taught by Weinstein et al.

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Berdan with the separable connector means that are formed in the precut fibrous insulation batts by partial cuts in the precut fibrous insulation batts, intermediate adjacent batt section of the precut fibrous insulation batt, that do not completely sever the batt between the adjacent batt section and the partial cuts are closed in order to prevent the formation of thermal bridges by the resilience of the precut fibrous insulation batt (col. 5 lines 50-61 and col. 6 lines 3) as taught by Weinstein et al.

Berdan fail to disclose that between 20% to 70% of the resilient fibrous insulation batts are precut fibrous insulation batts and between 30% and 80% of the stack of resilient fibrous insulation batts being the uncut fibrous insulation batts.

It would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Berdan with between 30% and 80% of uncut insulation batts and between 20% and 70% of precut insulations batts depending on the amount of elongated cavities of standard distance and nonstandard distance are formed in the walls, ceilings, floors and/or roofs since

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Weinsten et al. teaches that it is common for 50% or more of the framing members in the exterior walls of these structures to be spaced apart at nonstandard distances that are less than the standard spacing for such framing members (col. 1 lines 39-42).

It has been held that a recitation with respect to the manner in which a claimed article is intended to be employed such as "for holding the precut fibrous insulation batt together for handling and each of the separable connector means being separable by hand to separate adjacent batt sections from each other whereby the precut fibrous insulation batt can be handled as a unit for insulating a cavity having a width about equal to the width of the precut fibrous insulation batt or separated by and into batt section at one of more of the separable connector means for insulating a cavity having a lesser width" does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham* 2 uSPQ2d 1647 (1987).

5. Claims 10 and 26 rejected under 35 U.S.C. 103(a) as being unpatentable over Berdan II (5350063) in view of Weinstein et al. (6165305) and in further view of Allwein et al. (5817387).

Berdan and Weinstein et al. discloses the insulation package described above. Berdan fail to disclose that each of the facing sheets has a first pair of tabs adjacent lateral edges of the first major surface of and extending along the length of the resilient fibrous insulation batt to which the facing sheet is bonded, and each of the facing sheets bonded to one of the precut fibrous insulation batts has additional pairs of tabs, at least substantially aligned with the separable

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connector means of and extending along the length of the precut fibrous insulating batt to which the facing sheet is bonded.

Allwein et al. teaches that each of the facing sheets has a first pair of tabs adjacent lateral edges of the first major surface of and extending along the length of the resilient fibrous insulation batt (figure 2 number 32 and 36) to which the facing sheet is bonded, and each of the facing sheets bonded to one of the precut fibrous insulation batts has additional pairs of tabs, at least substantially aligned with the separable connector means (figure 1 number 42) of and extending along the length of the precut fibrous insulating batt to which the facing sheet is bonded for the purpose of sealing the facing material together and reducing the likelihood of the dust and fibers becoming a possible irritant to the workers handling and installing the insulation assemblies (col. 4 lines 35-50).

Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to provide Berdan with each of the facing sheets that has a first pair of tabs adjacent lateral edges of the first major surface of and extending along the length of the resilient fibrous insulation batt to which the facing sheet is bonded, and each of the facing sheets bonded to one of the precut fibrous insulation batts that has additional pairs of tabs, at least substantially aligned with the separable connector means of and extending along the length of the precut fibrous insulating batt to which the facing sheet is bonded in order to seal the facing material together and reducing the likelihood of the dust and fibers becoming a possible irritant to the workers handling and installing the insulation assemblies (col. 4 lines 35-50) as taught by Allwein et al. .

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Conclusion

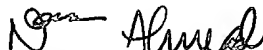
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 571-272-1499. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser Ahmad can be reached on 571-272-1487. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jane Rhee
July 22, 2004


NASSER AHMAD
PRIMARY EXAMINER 7/23/04